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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

EDUARDO RIOS MANILA,

Defendant and Appellant.

D074569

(Super. Ct. No. FWV1403670)

APPEAL from a judgment of the Superior Court of San Bernardino County,  
Mary E. Fuller, Judge. Reversed and remanded with directions.

Christopher Nalls, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney  
General, Julie L. Garland, Assistant Attorney General, Eric A. Swenson, Kristine A.  
Gutierrez and Christine Y. Friedman, Deputy Attorneys General, for Plaintiff and  
Respondent.

# I

## INTRODUCTION

A jury found Eduardo Rios Manila guilty of one count of committing a lewd act on a child under 14 against victim Jane Doe (Pen. Code, § 288, subd. (a); count 1),<sup>1</sup> one count of committing a lewd act on a child under 14 against victim Janet Doe (§ 288, subd. (a); count 2), three counts of committing a lewd act on a child under 14 against victim Mary Doe (§ 288, subd. (a); counts 4-6), and three counts of committing a lewd act on a child of 14 or 15 against victim Mary Doe (§ 288, subd. (c)(1); counts 7-9). As to counts 1 and 2, the jury also found true allegations Manila committed lewd acts against multiple victims (§§ 667.61, subd. (b) & (e)).<sup>2</sup>

The court sentenced Manila to a determinate term of 12 years in prison, consisting of six years for count 4, plus consecutive terms of two years each for counts 5 and 6, and consecutive terms of eight months each for counts 7 through 9. The court also sentenced Manila to a consecutive indeterminate term of 30 years to life, consisting of consecutive terms of 15 years to life each for counts 1 and 2.

Manila appeals, contending the court erred by failing to discharge his retained counsel and appoint a substitute counsel to represent him in postconviction proceedings. He also contends the court erred by refusing to consider his motion for new trial. Lastly, he contends the court abused its discretion by imposing consecutive indeterminate

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<sup>1</sup> Further statutory references are to the Penal Code unless otherwise indicated.

<sup>2</sup> The jury acquitted Manila of one count of committing a lewd and lascivious act on a child under 14 against victim Janet Doe (§ 288, subd. (a); count 3).

sentences for counts 1 and 2 because the court based its decision on the existence of multiple victims, a fact which already subjected him to indeterminate sentencing on these counts.

We agree the court erred by failing to discharge Manila's retained counsel and appoint substitute counsel to represent him in postconviction proceedings. Consequently, we reverse the judgment and remand the matter for the court to do so. Once Manila has substitute counsel, the case shall proceed from the point at which Manila originally sought to discharge his retained counsel. In light of our holding, we need not decide Manila's remaining contentions.

## II

### BACKGROUND

#### Count 1

When Jane Doe was 13 years old, she spent the night at the home of Janet Doe and slept in a recliner. At some point in the night, Jane woke to Manila touching her left breast over her clothing. She moved to her right side and Manila left. She then pulled her blanket up to her throat, wrapped it around her shoulders, and fell back asleep.

Sometime later, Jane woke up when Manila moved the blanket down a little and touched her breast over her clothing again. When she rolled over and pulled the blanket back over herself, Manila left.

Jane eventually fell back asleep but awoke to Manila touching her breast over her clothing once again. She rolled over so her chest was against the arm of the recliner and fell back asleep with her hands crossed over her chest.

While sleeping, Jane somehow ended up on her back with her hands still crossed over her chest and the blanket covering her up to her elbows. Manila moved her hands to her stomach and touched her left breast yet again. When she reached for the blanket and moved to her side a bit, he left, and she fell asleep again.

Jane woke up once more when Manila moved the blanket off her chest and touched her left breast a fifth time. She moved and pulled the blanket up to her face. Manila then walked away and she fell back asleep.

#### Count 2

When Janet Doe was 13, Manila grabbed her and pinned her down on his bed with one hand. He put his other hand underneath her bra, cupped her breast, and moved his hand up and down.

#### Counts 4–9

When Mary Doe was 10, Manila put his hand under her clothes while she was asleep. He rubbed her nipples between his right thumb and forefinger. He stopped touching her and moved away when she started squirming.

When Mary was 12, Manila had her take off her shirt and bra. He then cupped her breasts, felt them, and pushed them up.

A few times when Mary was between 13 and 15, Manila had her approach him when he was naked and grab his erect penis. He then had her pull his penis to the side and hold it while he rubbed lotion on his thighs right below his testicles.

Twice when Mary was 15, Manila helped her practice driving and had her sit on his lap. He put his hands in the crease between her vagina and thighs with the back of his

hands touching her vagina over her clothing. He told her he would squeeze the left side to signal a left turn and the right side to signal a right turn.

### III

## DISCUSSION

### A

Retained counsel represented Manila at trial. After trial, Manila wrote a lengthy letter to the court asking to submit several motions, including a motion under 1180 (for a new trial).<sup>3</sup> The letter listed several grounds for a new trial. Grounds 1 through 4 alleged insufficiency of the evidence based on perceived inconsistencies and weaknesses in victim and witness testimony. Ground 5 alleged juror bias and misconduct. Ground 6 alleged retained counsel provided ineffective assistance in numerous respects, including by failing to present certain evidence, offer character witnesses and evidence, ask questions on cross-examination, and make arguments in opposition to the prosecutor's objections.

At the sentencing hearing, the court stated:

"I have considered Mr. Manila's letter and his request to appoint separate counsel with regard to a motion for a new trial to look through all of the evidence to determine if there is cause for a new trial.

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<sup>3</sup> Rather than use a common title for the motion, Manila used the title associated with the authorizing statute. Specifically, he titled his motion for new trial as "P.C. 1180. Effect of Grant; Parties, Evidence; Former Verdict or findings." (Punctuation and capitalization errors in original.) Toward the end of his letter, he apologized for any erroneous statutory citations and clarified he was asking to be retried because he did not believe he received a fair trial.

"Mr. Manila, the issues that you raise in your letter are all issues for an appeal. They are not issues for a motion for a new trial. And because of that, I am going to deny your request to appoint counsel to just review the matter to determine whether or not there were grounds for a new trial as no grounds have been stated at this time. And you need to raise all of these issues on appeal because they are appellate issues, not new trial issues. [¶] Do you understand that?"<sup>4</sup>

The following exchange then occurred:

"[MANILA]: Yes, Your Honor. And I apologize. As stated in my letter that I wrote, I am not an attorney.

"THE COURT: I know, I know. That's not a problem.

"[MANILA]: Okay.

"THE COURT: I don't have a problem that you raised them.

"[MANILA]: Like I said, I apologize. *I am requesting a new attorney, conflict-panel attorney, to review some of the stuff to help me with that stuff.*

"THE COURT: Right. *I understand that.* And I am denying that request. You need to take it up with the appellate court.

"[MANILA]: Okay.

"THE COURT: The appellate court will appoint an attorney to assist you in doing that.

"[MANILA]: Thank you." (Italics added.)

B

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<sup>4</sup> The People concede, and we agree, the court was incorrect on this point. A motion for new trial may be based on jury misconduct, a verdict contrary to the evidence, and, in appropriate circumstances, claims of ineffectiveness of counsel. (§ 1181; *People v. Watts* (2018) 22 Cal.App.5th 102, 117.)

Manila contends the court erred by failing to discharge his retained counsel and appoint substitute counsel to represent him in postconviction proceedings. We agree.

"A defendant may discharge his retained counsel of choice at any time with or without cause." (*People v. Lara* (2001) 86 Cal.App.4th 139, 152 (*Lara*), citing *People v. Ortiz* (1990) 51 Cal.3d 975, 983 (*Ortiz*).) This rule applies even when a defendant seeks to discharge his retained counsel after he has been convicted. (*People v. Munoz* (2006) 138 Cal.App.4th 860, 863, 869 (*Munoz*).)

"[W]hen a criminal defendant makes a timely motion to discharge his retained attorney he should not be required to demonstrate the latter's incompetence, as long as the discharge will not result in prejudice to the defendant or in an unreasonable disruption of the orderly processes of justice." (*Ortiz, supra*, 51 Cal.3d at p. 979; *People v. Lopez* (2018) 22 Cal.App.5th 40, 51.) In determining whether to grant a motion, the court should "balance the defendant's interest in new counsel against the disruption, if any, flowing from the substitution." (*Lara, supra*, 86 Cal.App.4th at p. 153; accord, *People v. Keshishian* (2008) 162 Cal.App.4th 425, 429.)

Here, Manila sought appointment of new counsel after his conviction and before his sentencing, which he was permitted to do. (*Munoz, supra*, 138 Cal.App.4th at pp. 863, 869.) Discharging his retained counsel and appointing substitute counsel to represent him at that juncture would not have prejudiced him. To the contrary, he was facing multiple indeterminate sentences; he had identified several grounds upon which he believed his trial was unfair, including the ineffectiveness of his retained counsel; and he required the assistance of counsel to investigate and properly present these grounds to the

court, which his retained counsel could not do because of the ineffectiveness claims. Consequently, allowing his retained counsel to continue representing him was more prejudicial to him than appointing substitute counsel.

Additionally, nothing in the record suggests appointing substitute counsel at that juncture would have unreasonably disrupted proceedings. Substitute counsel would have needed a continuance to review the trial transcripts and assess whether there were, in fact, appropriate grounds to move for a new trial. However, because the trial was not particularly lengthy or complex, such a continuance would have been relatively brief and, consequently, not unreasonably disruptive. (See, e.g., *Munoz*, *supra*, 138 Cal.App.4th at pp. 869–870.)

Rather than address the application of the above standards to this case, the People contend the court was not required to consider whether to appoint substitute counsel for Manila because Manila did not clearly indicate he wanted to discharge his retained counsel. Instead, the People contend Manila appeared to be seeking the appointment of a separate, additional attorney to represent him in connection with a new trial motion.

The People are correct in stating a motion for substitute counsel must be sufficiently clear and unequivocal for the court to understand the defendant is, in fact, seeking substitute counsel. (*People v. O'Malley* (2016) 62 Cal.4th 944, 1004–1007; *People v. Sanchez* (2011) 53 Cal.4th 80, 91; *Lara*, *supra*, 86 Cal.App.4th at p. 157.) However, we have no difficulty concluding Manila met this requirement in this case.

Manila sent the court a lengthy letter explaining in detail why he believed his retained counsel had ineffectively represented him. Then, when the court mistakenly



informed him none of the points in his letter was an appropriate ground for a new trial motion (see fn. 4, *ante*), he apologized for his lack of legal training and specifically, unequivocally requested appointment of new counsel to assist him with the motion.

The court then expressly and unequivocally stated it understood his request. The court nonetheless denied the request, not because he was requesting additional, rather than substitute counsel, but because the court mistakenly thought he was raising issues only cognizable on appeal and would have appointed appellate counsel to assist him with his appeal. Accordingly, we conclude the court erred by failing to discharge Manila's retained counsel and appoint substitute counsel to represent him in postconviction proceedings.

Failure to grant a criminal defendant's timely motion to discharge his retained attorney is presumptively prejudicial and requires automatic reversal. (*Ortiz, supra*, 51 Cal.3d at pp. 988–989.) In light of our holding, we need not decide the remaining points raised by the parties. (See *Munoz, supra*, 138 Cal.App.4th at p. 870.)

#### IV

#### DISPOSITION

The judgment is reversed. The matter is remanded to the trial court with directions to discharge Manila's retained counsel and appoint substitute counsel to represent him. Once Manila has substitute counsel, the case shall proceed from the point at which Manila originally sought to discharge his retained counsel.

McCONNELL, P. J.

WE CONCUR:

NARES, J.

HALLER, J.